



February 18, 2005

HOUSE BILL No. 1073

DIGEST OF HB 1073 (Updated February 14, 2005 1:17 pm - DI 96)

Citations Affected: IC 5-14; IC 9-14; IC 9-24.

Synopsis: Public records and BMV procedures. Specifies that (1) the bureau of motor vehicles (bureau) has discretion to withhold certain medical records and evaluations regarding the ability of a driver to operate a motor vehicle safely; and (2) a law enforcement agency has discretion to withhold certain items of personal information contained in the files of the law enforcement agency. Authorizes the bureau to conduct a reasonable investigation of a driver's continued fitness to operate a motor vehicle when the bureau has reason to believe that a licensed driver may not be able to operate safely,. Specifies that bureau may not suspend or revoke the license of a licensed driver whose fitness to drive safely is questioned until a reasonable investigation of the driver's continued fitness has been made by the bureau. Makes conforming amendments.

Effective: July 1, 2005.

Lehe, Burton

January 6, 2005, read first time and referred to Committee on Roads and Transportation.
February 17, 2005, amended, reported — Do Pass.

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HB 1073—LS 6329/DI 96+



February 18, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1073

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.173-2003,
2 SECTION 5, AND AS AMENDED BY P.L.200-2003, SECTION 3, IS
3 CORRECTED AND AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The following public records
5 are excepted from section 3 of this chapter and may not be disclosed by
6 a public agency, unless access to the records is specifically required by
7 a state or federal statute or is ordered by a court under the rules of
8 discovery:
9 (1) Those declared confidential by state statute.
10 (2) Those declared confidential by rule adopted by a public
11 agency under specific authority to classify public records as
12 confidential granted to the public agency by statute.
13 (3) Those required to be kept confidential by federal law.
14 (4) Records containing trade secrets.
15 (5) Confidential financial information obtained, upon request,
16 from a person. However, this does not include information that is
17 filed with or received by a public agency pursuant to state statute.

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(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

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(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the Indiana film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) ~~information concerning the factual basis for a disciplinary action~~ *action* in which final action has been taken and that resulted in the employee being ~~disciplined~~ *suspended, demoted, or discharged.*

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing

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1 systems, and other software that are owned by the public agency
 2 or entrusted to it and portions of electronic maps entrusted to a
 3 public agency by a utility.

4 (12) Records specifically prepared for discussion or developed
 5 during discussion in an executive session under IC 5-14-1.5-6.1.
 6 However, this subdivision does not apply to that information
 7 required to be available for inspection and copying under
 8 subdivision (8).

9 (13) The work product of the legislative services agency under
 10 personnel rules approved by the legislative council.

11 (14) The work product of individual members and the partisan
 12 staffs of the general assembly.

13 (15) The identity of a donor of a gift made to a public agency if:

14 (A) the donor requires nondisclosure of the donor's identity as
 15 a condition of making the gift; or

16 (B) after the gift is made, the donor or a member of the donor's
 17 family requests nondisclosure.

18 (16) Library or archival records:

19 (A) which can be used to identify any library patron; or

20 (B) deposited with or acquired by a library upon a condition
 21 that the records be disclosed only:

22 (i) to qualified researchers;

23 (ii) after the passing of a period of years that is specified in
 24 the documents under which the deposit or acquisition is
 25 made; or

26 (iii) after the death of persons specified at the time of the
 27 acquisition or deposit.

28 However, nothing in this subdivision shall limit or affect contracts
 29 entered into by the Indiana state library pursuant to IC 4-1-6-8.

30 (17) The identity of any person who contacts the bureau of motor
 31 vehicles concerning the ability of a driver to operate a motor
 32 vehicle safely and the medical records and evaluations made by
 33 the bureau of motor vehicles staff or members of the driver
 34 licensing ~~medical committee~~ advisory board **regarding the**
 35 **ability of a driver to operate a motor vehicle safely.** However,
 36 upon written request to the commissioner of the bureau of motor
 37 vehicles, the driver must be given copies of the driver's medical
 38 records and evaluations. ~~that concern the driver.~~

39 (18) School safety and security measures, plans, and systems,
 40 including emergency preparedness plans developed under
 41 511 IAC 6.1-2-2.5.

42 (19) A record or a part of a record, the public disclosure of which

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would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

- (A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;
- (B) vulnerability assessments;
- (C) risk planning documents;
- (D) needs assessments;
- (E) threat assessments;
- (F) domestic preparedness strategies;
- (G) the location of community drinking water wells and surface water intakes;
- (H) the emergency contact information of emergency responders and volunteers;
- (I) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and
- (J) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection *by any public agency* without the prior approval of the public agency *that owns, occupies, leases, or maintains the airport*. The ~~submitting~~ public agency *that owns, occupies, leases, or maintains the airport*:

(i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and

(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under ~~IC 5-14-3-4(19)(I)~~ **IC 5-14-3-4(b)(19)(J)** without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless

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release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address.

(C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:

(A) Telephone number.

(B) Address.

(C) Social Security number.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 2. IC 9-14-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. The board shall provide the commissioner with assistance in the administration of Indiana driver licensing laws, including:

(1) providing guidance to the commissioner in the area of licensing drivers with health or other problems that may adversely affect a driver's ability to operate a vehicle safely;

(2) recommending factors to be used in determining qualifications and ability for issuance and retention of a driver's license; and

(3) recommending and participating in the review of license suspension, restriction, or revocation appeal procedures, **including reasonable investigation into the facts of the matter.**

SECTION 3. IC 9-24-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) If the bureau has good cause to believe that a licensed ~~operator or chauffeur~~ **driver** is:

(1) incompetent; or

(2) otherwise not qualified to be licensed;

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the bureau may, upon written notice of at least five (5) days, require the licensed ~~operator or chauffeur~~ **driver** to submit to an examination. **The bureau also may conduct a reasonable investigation of the driver's continued fitness to operate a motor vehicle safely, including requesting medical information from the driver or the driver's health care sources.**

(b) Upon the conclusion of an examination **or investigation** under this section, the bureau:

(1) shall take appropriate action; and

(2) may:

(A) suspend or revoke the license of the licensed ~~operator or chauffeur~~ **driver**;

(B) permit the licensed ~~operator or chauffeur~~ **driver** to retain the license of the licensed ~~operator or chauffeur~~ **driver**; or

(C) issue a **restricted** license subject to restrictions considered necessary in the interest of public safety.

(c) If a licensed ~~operator or chauffeur~~ **driver** refuses or neglects to submit to an examination under this section, the bureau may suspend or revoke the license of the licensed ~~operator or chauffeur~~ **driver**. **The bureau may not suspend or revoke the license of the licensed driver until a reasonable investigation of the driver's continued fitness to operate a motor vehicle safely has been made by the bureau.**

(d) A licensed ~~operator or chauffeur~~ **driver** may appeal an action taken by the bureau under this section to the circuit court or superior court of the county in which the licensed ~~operator or chauffeur~~ **driver** resides.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred House Bill 1073, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 30, reset in roman "The identity of any person who contacts the bureau of motor ".

Page 4, reset in roman line 31.

Page 4, line 32, reset in roman "vehicle safety and".

Page 4, line 32, delete "The" and insert "the".

Page 6, between lines 8 and 9, begin a new line block indented and insert:

"(21) The following personal information about a complainant contained in records of a law enforcement agency:

(A) Telephone number.

(B) Address.

(C) Social Security number."

Page 6, after line 20, begin a new paragraph and insert:

"SECTION 2. IC 9-14-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. The board shall provide the commissioner with assistance in the administration of Indiana driver licensing laws, including:

- (1) providing guidance to the commissioner in the area of licensing drivers with health or other problems that may adversely affect a driver's ability to operate a vehicle safely;
- (2) recommending factors to be used in determining qualifications and ability for issuance and retention of a driver's license; and
- (3) recommending and participating in the review of license suspension, restriction, or revocation appeal procedures, **including reasonable investigation into the facts of the matter.**

SECTION 3. IC 9-24-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) If the bureau has good cause to believe that a licensed ~~operator or chauffeur~~ **driver** is:

- (1) incompetent; or
- (2) otherwise not qualified to be licensed;

the bureau may, upon written notice of at least five (5) days, require the licensed ~~operator or chauffeur~~ **driver** to submit to an examination. **The bureau also may conduct a reasonable investigation of the driver's continued fitness to operate a motor vehicle safely, including requesting medical information from the driver or the driver's health care sources.**

(b) Upon the conclusion of an examination **or investigation** under



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this section, the bureau:

(1) shall take appropriate action; and

(2) may:

(A) suspend or revoke the license of the licensed ~~operator or chauffeur~~; **driver**;

(B) permit the licensed ~~operator or chauffeur~~ **driver** to retain the license of the licensed ~~operator or chauffeur~~; **driver**; or

(C) issue a **restricted** license subject to restrictions considered necessary in the interest of public safety.

(c) If a licensed ~~operator or chauffeur~~ **driver** refuses or neglects to submit to an examination under this section, the bureau may suspend or revoke the license of the licensed ~~operator or chauffeur~~; **driver**. **The bureau may not suspend or revoke the license of the licensed driver until a reasonable investigation of the driver's continued fitness to operate a motor vehicle safely has been made by the bureau.**

(d) A licensed ~~operator or chauffeur~~ **driver** may appeal an action taken by the bureau under this section to the circuit court or superior court of the county in which the licensed ~~operator or chauffeur~~ **driver** resides."

and when so amended that said bill do pass.

(Reference is to HB 1073 as introduced.)

DUNCAN, Chair

Committee Vote: yeas 11, nays 0.

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